

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION**

ROSENBERGER'S DAIRIES, LLC¹

Employer

and

Case 4–RC–21393

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS LOCAL 463²

Petitioner

**REGIONAL DIRECTOR'S DECISION AND
DIRECTION OF ELECTION**

The Employer, Rosenberger's Dairies, is a producer and distributor of dairy products. As a result of a merger, it is now part of HP Hood, LLC. The Employer conducts its business from three Pennsylvania facilities: a production and distribution facility in Hatfield and distribution depots in Levittown and West Chester. The Petitioner, Teamsters Local 463, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act. Pursuant to this petition, as amended, the Petitioner seeks to represent a unit of production and maintenance employees, shipping and receiving employees, drivers, production mechanics, garage mechanics, working foremen, yard jockeys, and sanitation employees at the Employer's Hatfield facility. There are approximately 160 employees in the petitioned-for unit.

The Employer raises several issues as to the appropriateness of the unit. First, the Employer contends that the only appropriate unit is a multi-location unit which would include, in addition to employees at the Hatfield facility, the drivers and shipping and receiving employees at the depots in Levittown and West Chester. Further, the Employer contends that the unit should include, in addition to the petitioned-for classifications, quality assurance employees (QA Techs), vending service employees, and customer service representatives (CSRs) at the Hatfield facility. The Employer's proposed unit would include about 211 employees.

¹ The name of the Employer was amended at the hearing.

² The name of the Petitioner was amended at the hearing.

A Hearing Officer of the Board held a hearing. The Petitioner presented an oral argument at the hearing, and the Employer filed a brief. I have considered the evidence and the arguments presented by the parties, and I have concluded that the Employer has not overcome the presumption that the single-location Hatfield facility unit is an appropriate unit. I further conclude, in agreement with the Employer, that the appropriate unit should include the QA Techs and the vending service employees employed at the Hatfield facility. I shall not include the CSRs at the Hatfield facility in the unit, as they are essentially office clerical employees who do not share a sufficient community of interest with the petitioned-for employees to require their inclusion.

In this Decision, I will first present the relevant facts. Next, I will review the factors which must be evaluated in determining whether a single-location or multi-location unit is appropriate and whether the employees in the three disputed classifications share a community of interest with other employees in the unit. Then, I will set forth the facts and reasoning that support my conclusions.

I. FACTS

The Employer's Facilities

The Employer produces fluid milk and beverages such as juices and teas at the Hatfield facility. At this location, the Employer also receives and distributes dairy products produced by other entities, including yogurt, cottage cheese, and cream. The Hatfield facility houses at least four buildings on a seven or eight-acre campus. The production plant and the warehouse are located in one building, which also contains the laboratory, an office area, and a breakroom. QA Techs work in the laboratory, and CSRs work in the office area. At a second building, the garage mechanics repair and maintain the Employer's vehicles, and other employees wash empty milk cases. This building has its own breakroom. Vending service employees are based in the vending building, and a fourth building, the distribution center, contains a dry storage area, a cooler, distribution facilities, a drivers' room, and a food concession wagon. The shipping and receiving employees and drivers work out of this building.

The Levittown and West Chester depots are each approximately 40 miles from the Hatfield facility. Both depots have warehouse and distribution facilities, where products are placed on trucks for transportation to customers.

Job Classifications

At the Hatfield facility, there are approximately 34 production employees, 24 Class A CDL drivers, 43 Class B CDL drivers, six or seven production mechanics, six garage mechanics, three QA Techs, three or four vending service employees, and nine CSRs. There are also an uncertain number of shipping and receiving employees.

The employees at the Hatfield facility are placed in pay ranges according to their job classifications. Receivers, sanitation employees, fluid fill operators, and cooler shippers earn from \$13.96 to \$17.66 per hour;³ warehouse employees earn from \$13.41 to \$17.55; case dock employees, "debuggers," and utility employees earn from \$12.88 to \$16.47; and food preparation employees and janitors earn from \$7.73 to \$11.04. There are also various classifications of garage mechanics and production mechanics who earn from \$16.66 to \$24.14.

At the Levittown depot, there are about 17 Class B CDL truck drivers and five shipping and receiving employees, and at the West Chester depot, the Employer employs about 12 Class B CDL drivers and one shipping and receiving employee.

The Employer's Personnel Policies

All of the employees at the Hatfield, West Chester, and Levittown facilities receive the same corporate benefits and are subject to the same corporate-wide employment policies and pay schedule applicable to all employees under Hood LLC, the Employer's parent. Human resource functions are handled at either Hatfield or through a shared services facility for Hood LLC in Binghamton, New York. All human resource records are maintained at Hatfield.

The Employer uses a corporate-wide hiring management system that features a website with job listings and application forms. An individual seeking employment at the West Chester or Levittown depots typically completes an application on the website and then is screened by telephone by the Human Resources Manager at Hatfield. Thereafter, the applicant is interviewed in person at either West Chester or Levittown by the local supervisor there. Provided that the job applicant has passed the drug screen and other screens, the Hatfield Human Resources department regularly approves the hiring recommendation of the local depot supervisor.

The local supervisor imposes discipline and prepares annual reviews for the depot employees but these actions must be approved by the Hatfield Human Resource manager. There is no evidence of any situation in which Human Resources did not approve disciplinary recommendations or employee evaluations. Additionally, depot supervisors handle all scheduling matters for employees at their locations, and when depot employees call out sick, they contact the supervisors at their facilities.

There is no history of collective bargaining at any of the three locations.

Drivers

The Employer's Class A drivers drive tractor-trailers, while the Class B drivers drive smaller "straight" trucks. Once the Employer's products are produced and ready to be shipped, Class A tractor-trailer drivers from the Hatfield facility transport these products directly to wholesale customers such as supermarkets. They also carry products to the Employer's depots in

³ All wage rates listed are exclusive of lead employee differentials of \$1 per hour and shift differentials of .75 per hour.

West Chester and Levittown for distribution by Class B drivers to customers in their areas. After delivering their products to customers or the depots, the Class A drivers bring the empty trailers back to Hatfield. Hatfield Class A drivers deliver 10 loads to the Levittown depot and 8 loads to the West Chester depot each week. They spend approximately 30 minutes at each depot when they make their deliveries. During that time, they unhook their trailers, pick up their paperwork in the offices, move their tractors to different trailers, and hook them up.⁴ Class B drivers at all of the Employer's facilities deliver products to smaller grocery stores, schools, and vending locations, where they fill vending machines and collect money.

Both of the depots have a supervisor for the drivers and shipping and receiving employees based at their locations. These supervisors have no responsibilities at Hatfield, but they report to the Employer's Logistics Manager, who is located in Hatfield and also is in charge of the two Logistics Supervisors at Hatfield. Each depot supervisor is responsible for the day-to-day operations of his location and, among other duties, schedules driver deliveries, deals with customer issues, and oversees driver paperwork. When a depot supervisor is out sick or on vacation, his duties are usually performed by the office employee and a lead driver.⁵

Class A drivers earn from \$17.74 to \$20.90 per hour, while Class B drivers earn from \$16.66 to \$19.17. Drivers' working hours depend on the needs of the customers on their routes, but they generally work from early in the morning until after lunch. All drivers punch timeclocks at their own facilities. There are separate seniority lists for Hatfield, West Chester, and Levittown drivers which are used for route selection at their respective locations. Drivers wear uniforms, including pants, shirt, and a jacket with the Employer's name on it.

The Employer has one "jumper" at West Chester and two at Levittown who know all of the routes at these locations and can substitute for drivers who are ill or on vacation. If no jumper is available, the Employer generally runs the route out of Hatfield with a Hatfield driver, although this has occurred for no more than five percent of the runs for West Chester and only once in the past year for Levittown. In rare situations, Hatfield drivers may go to the depots and run the routes from there; Hatfield drivers have run West Chester routes less than one percent of the time, and have never run Levittown routes.

If a depot is short on product, a Class B driver from either depot can come to Hatfield to pick up additional product. A West Chester driver has been coming to Hatfield about once a week recently for this purpose, and previously came about once a month. A Levittown driver comes to Hatfield for product about once per month, at most. Indeed, if Levittown is short on product, a Levittown driver might not go all the way to the Hatfield facility, but may meet a Hatfield driver halfway and switch trucks. When a depot driver comes to Hatfield, he or she may

⁴ While the record indicates that an office employee at each depot handles telephone calls from customers, the record is unclear as to the extent to which the Hatfield drivers interact with that employee, if at all, when they pick up paperwork.

⁵ The record indicates that if the lead driver and the office employee have difficulty performing the depot supervisor's duties, the Logistics Manager at Hatfield can be contacted. The record does not, however, reflect how often this scenario has occurred.

spend 30 to 45 minutes there. The record does not reflect with which employees at Hatfield, if any, the depot drivers interact during this time.

There is no evidence of any permanent transfers of either drivers or shipping and receiving employees among any of the Employer's three facilities. There is also no evidence that the shipping and receiving employees at West Chester or Levittown have contact with Hatfield employees other than drivers, and the extent of interaction with drivers is not set forth in the record.⁶

QA Techs

QA Techs, along with receiving employees, inspect raw milk that is brought by tanker to the facility's receiving bays to ensure that it meets the relevant standards. Once approved for receipt, the milk is pumped into large tanks and then processed and pasteurized, and QA Techs perform additional tests at this stage. After pasteurization, the milk is placed in containers, brought into the warehouse for storage and/or shipping, and QA Techs perform more tests.

In addition to performing tests on the products, the QA Techs inspect the cleanliness of the equipment and interact as needed with various regulatory agencies. They are required to have a high school diploma, the same degree required for all production, maintenance, and shipping and receiving employees.

The QA Techs interact each day with receiving employees, filler operators, and others in the production process when they verify fat levels in the milk products and collect samples for testing and verification. Additionally, certain production employees come into the laboratory on a daily basis to run their own tests for butterfat analysis. The QA Techs spend at least 85 percent of their time in the QA laboratory.

The QA Techs are supervised by the Quality Manager at Hatfield. They punch a timeclock, are paid on an hourly basis, and earn from \$15.57 to \$18.20 per hour. They work either from 7:00 a.m. to 3:00 p.m. or 1:00 p.m. to 9:00 p.m. QA Techs wear laundered white uniforms and/or laboratory coats, while production and warehouse employees wear laundered white uniforms.

Vending Service Employees

The three or four vending service employees work out of the vending building at the Hatfield location, and they primarily repair, maintain, and service vending machines in the field. They punch timeclocks at Hatfield, are hourly paid, and report to a Vending Supervisor.

⁶ While the CSRs telephone all of the customers, local customers are generally serviced by each location. The CSRs do not interact with the depot drivers, and at both depots, the office employee does all the paperwork and collects money from the depot drivers and interacts with them.

Vending service employees generally work the first shift, from around 7:00 a.m. to 3:00 p.m., and they earn from \$16.66 to \$19.82 per hour.

In addition to a high school diploma, vending service employees are required to possess certain mechanical and electrical skills needed to repair the equipment. Some of these skills are shared by production mechanics and garage mechanics. Vending service employees use hand tools and power tools, including screwdrivers, pliers, electrical testing equipment, and gauges. They also perform repairs in the vending building, as well as in the plant and the distribution center. The repairs in the plant and distribution center would otherwise be performed by production mechanics. Currently, vending service employees are constructing an office in the warehouse.

If a regular driver is short of products on his or her truck, a vending service employee may be sent to bring additional products to the customer, and these trips sometimes occur on a daily basis. Vending service employees may also load vending machines, a job normally performed by Class B drivers, when they repair a machine and the machine is short of product. The record does not reflect what interaction, if any, vending service employees have with drivers or production mechanics, or any other employees at Hatfield.

CSRs

The nine CSRs all work at Hatfield in an office area in the front of the main production plant. They work in cubicles with computers and telephones and report to a Customer Service Manager. The CSRs work from 7:00 a.m. to 4:00 p.m.

The CSRs' primary duty is to take orders from customers by telephone and process these orders. Additionally, each day, they receive paperwork and money from the drivers, and if drivers have any customer issues, they will speak to the CSRs or the Customer Service Manager. Less than five percent of the CSR's day is spent interacting with Hatfield drivers or warehouse employees, and the CSRs do not interact at all with the West Chester or Levittown drivers. While they are paid on an hourly basis and receive overtime pay for more than 40 hours a week, the Employer, on its payroll documents, lists their wages on a weekly basis while other employees in the proposed unit are listed on an hourly basis. CSRs earn from \$493.16 to \$774.35 per week.

II. FACTORS RELEVANT TO DETERMINING THE APPROPRIATE UNIT

The Board's procedure for determining an appropriate unit under Section 9(b) is first to examine the petitioned-for unit. If that unit is appropriate, the inquiry ends. *American Hospital Association v. NLRB*, 499 U.S. 606, 610 (1991); *Dezcon, Inc.*, 295 NLRB 109, 111 (1989). If the petitioned-for unit is not appropriate, the Board may examine the alternative units suggested by the parties, but it also has the discretion to select an appropriate unit that is different from the alternative unit proposals of the parties. See *The Boeing Co.*, 337 NLRB 152, 153 (2001);

Bartlett Collins Co., 334 NLRB 484 (2001). The Board generally attempts to select a unit that is the smallest appropriate unit encompassing the petitioned-for employee classifications. *Overnite Transportation Co.*, 331 NLRB 662, 663 (2000). It is well settled that the unit need only be an appropriate unit, not the most appropriate unit. *Morand Brothers Beverage Co.*, 91 NLRB 409, 418 (1950), *enfd. on other grounds* 190 F. 2d 576 (2d Cir. 1951). In determining whether a group of employees possesses a separate community of interest, the Board examines such factors as the degree of functional integration between employees, common supervision, employee skills and job functions, interchange of employees, contact among employees, and similarities in wages, hours, benefits, and other terms and conditions of employment. *Home Depot USA*, 331 NLRB 1289 (2000); *Esco Corp.*, 298 NLRB 837 (1990).

It is well-established that a single-facility unit is presumptively appropriate, unless it has been so effectively merged into a more comprehensive unit, or is so functionally integrated, that it has lost its separate identity. See, e.g., *Hilander Foods*, 348 NLRB No. 82 (2006). The burden of rebutting this presumption falls on the party arguing in favor of a multi-facility unit. *J&L Plate, Inc.*, 310 NLRB 429 (1993). The Board examines a number of factors to determine whether the presumption has been rebutted. They are: (1) central control over daily operations and labor relations, including extent of local autonomy; (2) similarity of employee skills, functions, and working conditions; (3) degree of employee interchange; (4) distance between locations; and (5) bargaining history, if any. *Hilander Foods*, above; *J&L Plate*, above. While centralized control over personnel and labor relations policies is a factor to be evaluated in determining whether the presumption has been rebutted, it will not be sufficient in and of itself to rebut the single-facility presumption where significant local autonomy exists. *New Britain Transportation Co.*, 330 NLRB 397 (1999). Significant local autonomy will be found when employees perform their day-to-day work under the supervision of one who is involved in rating their performance and affecting their job status and who is personally involved with daily matters which make up their grievances and routine problems. *Hilander Foods*, above; *Rental Uniform Service, Inc.*, 330 NLRB 334, 335-336 (1999); *Renzetti's Market, Inc.*, 238 NLRB 174, 175 (1978).

The Board has repeatedly found quality control employees to be appropriately included in units with production and maintenance employees. See *Bennett Industries, Inc.*, 313 NLRB 1363, 1364 (1994); *Libbey Glass Division, Owens-Illinois, Inc.*, 211 NLRB 939, 941 (1974) and cited cases (1974). Cf. *Lundy Packing, Inc.*, 314 NLRB 1042, 1043 (1994). In *Blue Grass Industries, Inc.*, 287 NLRB 274, 299 (1987), the Board found that quality control employees should be included in a unit with production employees, although they were separately supervised, because their role was a vital part of the production process. Laboratory dairy testers with only high school educations who perform routine standardized tests such as microscopic tests for bacteria count and butterfat levels have been found to share interests sufficiently allied to production and maintenance employees to warrant their inclusion in the same bargaining unit. *Prairie Farms Creamery of Bloomington*, 116 NLRB 1237 (1956); *Wells Dairies Cooperative*, 107 NLRB 1445 (1954).

III. ANALYSIS

A. The Scope of the Unit

The Employer has not established that the unit of Hatfield employees has so effectively merged with the Employer's two warehouse and distribution depots as to lose this unit's separate identity.

The Employer is correct that there are several factors that would favor a multi-location unit. Thus, the Employer retains centralized control over personnel and labor relations policies and provides corporate-wide benefits. Human resource officials at Hatfield approve all employee hiring and evaluations. Additionally, all Class B drivers drive similar trucks, employees at all facilities handle the same products, and the Hatfield Class B drivers and shipping and receiving employees have the same general skills and job functions as the employees in those classifications at the depots.

On the other hand, I find that there is a significant amount of local autonomy at each facility. The drivers and shipping and receiving employees at the depots report to a supervisor stationed at their location who has no responsibilities at the Hatfield location. Each depot supervisor is responsible for day-to-day operations for his location and schedules driver deliveries, deals with customer issues, and oversees driver paperwork there. The depot supervisors decide whether to initiate discipline, prepare employee evaluations, interview prospective employees for hire, and make hiring recommendations, and there is no evidence that their judgments in these areas have been overturned. Significantly, each facility has a separate seniority list. Local autonomy of this type for separate facilities is an important factor in finding single-plant units to be appropriate. See e.g., *New Britain Transportation*, above.

Moreover, there is no evidence of any permanent transfers among employees of the three facilities and little interaction between employees from Hatfield and employees at either West Chester or Levittown. In this connection, the record does not show extensive contact between the Class A Hatfield drivers and employees at the depots when the drivers make their deliveries. Similarly, the record does not reveal extensive contact between Class B depot drivers and Hatfield employees on the relatively infrequent occasions when depot drivers come to Hatfield to pick up additional product. Although Hatfield drivers at times run routes for depot drivers, when the depot drivers and the jumpers are unavailable, this is not a frequent or regular occurrence.

Further, the depots in West Chester and Levittown are each approximately 40 miles away from the Hatfield complex, a considerable distance. See *Waste Management Northwest*, 331 NLRB 309 (2000);⁷ *Rental Uniform Service*, above.

⁷ In that case, while the Board found, based on other factors, that the single-facility presumption had been rebutted, the Board found that a 42-mile distance between the facilities would favor a single-facility unit.

Based on all of the above, and in particular, separate local supervision, significant local autonomy, distance between the facilities, and lack of employee transfers and interchange, I conclude that the Employer has not rebutted the presumption that the petitioned-for single-location Hatfield unit is an appropriate unit. *Hilander Foods*, above; *Cargill Incorporated*, 336 NLRB 1114 (2001); *Rental Uniform Service*, above; and *New Britain Transportation*, above.⁸

B. Quality Assurance employees

I find that the QA Techs should be included in the petitioned-for unit because their role is vital to the production process and they have daily interaction with various production employees. This interaction occurs when they verify fat levels in the milk products and collect samples for testing and verification. While the QA Techs spend more than 85 percent of their time in the QA laboratory, this laboratory is in the same building as the production plant, and production employees come into the laboratory on a daily basis to run their own tests. Further, the QA Techs do not have hiring requirements beyond those of the petitioned-for employees; they are only required have high school diplomas. Like the production and maintenance employees, they punch a timeclock, are paid on an hourly basis, wear a uniform, and earn comparable wages. Thus, although they have distinct job duties and are separately supervised at the first level, QA Techs generally share a community of interest with the petitioned-for employees and are therefore included in the unit. *Blue Grass Industries*, above; *Prairie Farms Creamery*, above; *Wells Dairies Cooperative*, above. Cf. *Lundy Packing*, above (quality control employees not included in the unit where they were separately supervised, had a different pay structure, no interchange, and insubstantial contact with the unit).

C. Vending Service employees

I find that the vending service employees share a community of interest with the unit employees at the Hatfield facility. While they are located in their own building, they are on the same campus as the petitioned-for employees. Like other employees, they punch timeclocks at Hatfield, are hourly paid, and possess high school diplomas, and they earn wages in the range of

⁸ The Employer cites *Dattco, Inc.*, 338 NLRB 49 (2002) and *Waste Management Northwest*, above, to support its contention that it has overcome the single-facility unit presumption. In *Dattco*, the Board found that the managers did not enjoy autonomy at the employer's terminals. Local managers could not grant time off, hire, fire, or discipline employees, and all work assignments were made at headquarters. Further there was significant interchange among the drivers at the various terminals. Similarly, in *Waste Management*, where the employer sought to add its Fife facility to the petitioned-for location in Woodinville, the Board found that there were no supervisors at the Fife facility and there was frequent interaction and coordination between the Fife and Woodinville employees.

In the instant case, however, there are local supervisors at each depot who have significant autonomy, including scheduling and overseeing their respective employees, and there is minimal interchange among the petitioned-for employees and employees at the depots which the Employer seeks to include in the unit. Accordingly, both cases cited by the Employer are distinguishable. See *Dean Transportation, Inc.*, 350 NLRB No. 4 fn. 3 (2007).

other unit employees and receive the same benefits. In addition to repairing the vending machines that are filled by the Hatfield Class B drivers, they substitute for drivers by loading vending machines at customer locations when the drivers are unable to do so or more products are needed. The Employer also uses them to perform various maintenance functions on machines at Hatfield, and they are currently building an office there. Such work, if not performed by the vending service employees, would be performed by bargaining unit maintenance employees. Based on the foregoing, I find that the vending service employees share a community of interest with the petitioned-for employees at Hatfield and should be included in the unit. See *Pepsi-Cola, Louisville Bottlers, Inc.*, 86 NLRB 1299 (1949).

D. Customer Service Representatives

In determining whether employees such as CSRs should be included in a production and maintenance employee unit, the Board examines to what degree they share a sufficient community of interest with the employees in the petitioned-for unit. See *Dlubak Corporation*, 307 NLRB 1138, 1171 (1992), enfd. 5 F. 3d 1488 (3rd Cir. 1993).

The CSRs at Hatfield do not share a community of interest with the employees in the unit. They work in an office area, and their primary duties are taking and processing orders from customers. Less than five percent of their day is spent in contact with drivers or warehouse employees, and the only evidence of interaction with petitioned-for employees is their receipt of paperwork and money from drivers and occasional discussions with them concerning customer issues. Like other employees, the CSRs work from approximately 7:00 a.m. to 4:00 p.m., and are paid on an hourly basis with overtime, but, unlike other employees, their wages are listed on a weekly basis. Based on the fact that they are separately supervised, have insubstantial contact with other employees, and have significantly different skills and duties, I find that the evidence does not support a finding that they share a community of interest with the petitioned-for employees. *Dlubak Corporation*, above. Accordingly, I will not include them in the unit.

IV. CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Petitioner claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full time and regular part-time production and maintenance employees, production mechanics, garage mechanics, drivers (CDL A and CDL B), shipping and receiving employees, working foremen, yard jockeys, sanitation employees, quality assurance laboratory employees (QA Techs), and vending service employees employed by the Employer at its Hatfield, Pennsylvania facility, **excluding** all office clericals, managers, customer service representatives (CSRs), guards, and supervisors as defined in the Act.

V. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for the purposes of collective bargaining by **International Brotherhood of Teamsters Local 463**. The date, time, and place of the election will be specified in the Notice of Election that the Board's Regional Office will issue subsequent to this Decision.

A. Eligible Voters

The eligible voters shall be unit employees employed during the designated payroll period for eligibility, including employees who did not work during that period because they were ill, on vacation, or were temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, employees engaged in an economic strike which commenced less than 12 months before the election date, who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Employees who are otherwise eligible but who are in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are 1) employees who have quit or been discharged for cause after the designated payroll period for eligibility, 2) employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and 3) employees engaged in an economic strike which began more than 12 months before the election date who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the **full** names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, One Independence Mall, 615 Chestnut Street, Seventh Floor, Philadelphia, Pennsylvania 19106-4499 on or before **March 24, 2008**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (215) 597-7658, or by E-mail to Region4@NLRB.gov.⁹ Since the list will be made available to all parties to the election, please furnish a total of three (3) copies, unless the list is submitted by facsimile or e-mail, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of three (3) working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least five (5) working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on non-posting of the election notice.

⁹ Documents sent by E-mail should be in a "read only" format that ensures that the attachment may not be modified or altered. The NLRB utilizes Microsoft Office software. Accordingly, an attachment to an E-mail message sent to a Regional, Subregional or Resident Office must be in an electronic format that may be opened, read and printed by that office. Microsoft Word documents must bear the suffix ".doc."; other documents must be named in a fashion to permit their recognition by Microsoft Office software, e.g., ".ppt" (PowerPoint) or ".xls" (Excel). The responsibility for the receipt and usability of a document rests exclusively upon the sender.

VI. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, NW, Washington, D.C. 20570-0001. A request for review may also be submitted by electronic filing through the Agency's website at **www.nlr.gov**. A copy of the request for review must be served on each of the other parties to the proceeding, and with the Regional Director either by mail or by electronic filing. Guidance for electronic filing can be found under the **E-Gov** heading on the Agency's website. This request must be received by the Board in Washington by 5:00 p.m., EDT on **March 31, 2008**.

Signed: March 17, 2008

at Philadelphia, PA

/s/ [Dorothy L. Moore-Duncan]

DOROTHY L. MOORE-DUNCAN
Regional Director, Region Four